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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,600	01/03/2007	Marinus Johannes Van Den Elzen	MI-0005	4764

23377 7590 04/01/2010

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EXAMINER	
PARADISO, JOHN ROGER	
ART UNIT	**PAPER NUMBER**
3721	

MAIL DATE	DELIVERY MODE
04/01/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/568,600	VAN DEN ELZEN ET AL.	
	Examiner	Art Unit	
	John Paradiso	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 February 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,15,17-27 and 29-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,15,17-27 and 29-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

1. The request filed on 2/4/2010 for a Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/568600 is acceptable and a CPA has been established. An action on the CPA is attached.

Claim Rejections

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-5, and 9-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980) in view of TAMPIERI (US 2002/0157355).

KENNEY ET AL discloses a method and apparatus for packaging tea in which a first sheet of heat-sealable material (4) is fed and used as a bottom sheet. Portions of tea (7) are placed on the bottom sheet and then covered by a separate top sheet (5). The top and bottom sheet are fed together between synchronized rotating sealing rollers (8, 10). The sealing roller (8) has heated ribs that run transversely to the direction of film motion and seal the sheets together at the edges of each package (see column 6:25-34 and Fig. 1). The sealing ribs rotate with the roller but are travelling at the same linear speed as the film when they make contact.

KENNEY ET AL does not disclose one of the sheets to be pre-shaped to fit the product.

TAMPIERI discloses a method and apparatus for packaging in which a film (1) is fed to a forming station (6) at which time it is pre-shaped to fit products, which are inserted at a later point (see Abstract and Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of KENNEY ET AL by pre-forming one of the sheets to fit the product, as taught by TAMPIERI, in order to provide a more attractive packaging for the products.

Regarding claim 2, the rotating frame is being read on the frame of the roller, which has an axis of rotation transverse to the film transport direction (see Fig. 2).

Regarding claim 4, TAMPIERRI discloses a pre-forming station that moves in a reciprocating manner. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of KENNEY ET AL and TAMPIERRI to exchange the reciprocating pre-forming station for a set of top and bottom rotating rollers in order to increase the speed and throughput of the machine, since forming rollers are already taught by KENNEY ET AL elsewhere in the invention.

Regarding claim 5, the pre-shaping station in the combination of KENNEY ET AL and TAMPIERRI do provide part of the impetus for the sheet to move downstream, where the product is on the sheet.

4. Claims 6, 12, 15, and 17-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980) in view of JOHNSON ET AL (US 5752365).

KENNEY ET AL discloses method and apparatus for packaging, as described above.

KENNEY ET AL does not disclose the products being elongated in form and positioned transversely to the moving sheets.

JOHNSON ET AL discloses a method and apparatus for processing bandoliers (20) of candy bars (18) (see column 4:54-58 and Fig. 2 and 3). The bandoliers are formed from a top sheet (122) and a bottom sheet (124) of film (column 4:28-53) with seals around and between the parallel, horizontally disposed candy bars.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of KENNEY ET AL to provide elongate products and place them transversely on the moving sheets, as taught by JOHNSON ET AL, in order to provide a wider variety of uses for the invention and to increase the types of products that can be packaged and sold to consumers.

Regarding claim 12, joining two sheets by folding the edge over (up, in this case) and heat-sealing the edges are art-recognized equivalents in the packaging arts for joining sheets and it would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the edge(s) of the joined sheets up and over in order to provide redundancy and increased strength in the bond.

Regarding claim 15, the combination of KENNEY ET AL and JOHNSON ET AL does not disclose perforating between the products during sealing. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations

as part of the lateral seals of the combination of KENNEY ET AL and JOHNSON ET AL in order to make the individual packages easier to separate for a user, since heat seals and perforations are art-recognized equivalents for edge seals in the packaging arts. The parallel items disclosed in JOHNSSON ET AL are being read as a bandolier.

Regarding claim 17, since JOHNSON ET AL discloses the packaging of candy bars which are typically not perfectly cylindrical, the product of the combination of KENNEY ET AL and JOHNSON ET AL would inherently by asymmetric about a horizontal plane.

Regarding claim 18, each sheet of the completed wrapped items has a profile of an inverted U-shape when viewed from the side.

Regarding claim 19, Fig. 1 of KENNEY ET AL clearly shows the underside as flat and laid on a flat surface as it is fed to the feed station.

Regarding claim 20, the product in the combination of KENNEY ET AL and JOHNSON ET AL appear to be spaced less than the height of each item. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the distance between the items in the combination of KENNEY ET AL and JOHNSON ET AL to be less than the height of each item in order to conserve space and packing material, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 21, Fig. 4 of JOHNSON ET AL clearly show the transverse seals as parallel to the longitudinal axes of the packaged candy bars.

Regarding claim 22, Fig. 4 of JOHNSON ET AL clearly show the lower sheet as parallel to the plane containing the longitudinal axis of the packaged candy bars.

Regarding claim 23, the bottom sheet in the combination of KENNEY ET AL and JOHNSON ET AL is being read as relatively rigid, since it is strong enough to hold and contain the product.

Regarding claim 24, the use of plastic-coated cardboard and plastic film are art-recognized equivalents for packaging foodstuffs in the packaging arts and it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottom sheet in the combination of KENNEY ET AL and JOHNSON ET AL out of plastic-coated cardboard in order to provide a more traditional look for the package of a candy bar, thus increasing customer appeal.

Regarding claim 26, joining two sheets by folding the edge over (up, in this case) and heat-sealing the edges are art-recognized equivalents in the packaging arts for joining sheets and it would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the edge(s) of the joined sheets up and over in order to provide redundancy and increased strength in the bond.

Regarding claim 27, Fig. 4 of JOHNSON ET AL clearly show the upper film extending from one transverse seal, over the packaged candy bar, to the next transverse seal.

Regarding claim 29, since JOHNSON ET AL discloses the packaging of candy bars which are typically not perfectly cylindrical, the product of the combination of KENNEY ET AL and JOHNSON ET AL would inherently by asymmetric about a horizontal plane.

Regarding claim 30, each sheet of the completed wrapped items has a profile of an inverted U-shape when viewed from the side.

Regarding claim 31, Fig. 1 of KENNEY ET AL clearly shows the underside as flat and laid on a flat surface as it is fed to the feed station.

Regarding claim 32, the product in the combination of KENNEY ET AL and JOHNSON ET AL appear to be spaced less than the height of each item. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the distance between the items in the combination of KENNEY ET AL and JOHNSON ET AL to be less than the height of each item in order to conserve space and packing material, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

5. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980) in view of LEMELSON (US 3684614).

KENNEY ET AL discloses method and apparatus for packaging, as described above.

KENNEY ET AL does not disclose the sealing ribs having ultrasonic sealing means.

LEMELSON discloses a method and apparatus for packaging products in which top and bottom sheets (11, 12) are passed and moved by means of rollers (14, 15), shaped and treated by succeeding rollers (35, 36) and formed into individual packages by means of rotating sealing rollers (39, 45). The individual packages are then welded laterally and longitudinally by heat or ultrasonic welding (column 4:45-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of KENNEY ET AL to use ultrasonic sealing means in the ribs, as taught by LEMELSON, in order to reduce the amount of radiant heat in the vicinity of the products, reducing the possibility of spoilage of the product due to heat.

6. Claims 8 and are rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980).

KENNEY ET AL discloses method and apparatus for packaging, as described above.

KENNEY ET AL does not disclose perforating between the products during sealing.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations as part of the lateral seals of the invention of JOHNSON ET AL in order to make the individual packages easier to separate for a user, since heat seals and perforations are art-recognized equivalents for edge seals in the packaging arts.

Response to Arguments

7. Applicant's arguments filed 2/4/2010 have been fully considered but they are not persuasive.

8. Applicant states on page 11 of his Response that "Each of claims 1, 9, and 11, however, require "a planar first sheet" on which the products are positioned. Tampieri, in contrast, teaches that its *lower* sheet is pre-shaped. Tampieri's products are placed in the pre-shaped blisters before being sealed by an upper sheet. Tampieri's configuration has the drawback of being complicated with regard to damaging the pre-shaped sheet, in particular if the sheet is flexible, compared with the invention of claims 1, 9, and 11."

However, the claims of the instant invention recite a pre-shaped "second sheet – not necessarily a lower sheet. Additionally, Examiner notes that the rejection used the teaching of TAMPIERI to show a pre-shaped film "to modify the invention of KENNEY ET AL by pre-forming one of the sheets to fit the product, as taught by TAMPIERI, in order to provide a more attractive packaging for the products." This is not the same as using the entire invention of TAMPIERI to modify the invention of KENNEY ET AL, specifically using the pre-shaped sheet as a base sheet.

9. Applicant states on page 12 of his Response that "Johnson's figures shows the sheets joined along a seam near the centerline of the array of products, and bending its seam has little relevance to Applicant's claimed structure. Moreover, it is unclear whether folding the edges of the jointed sheets up and over would provide increased strength of the bond, which was a rationale for modifying Johnson's structure. According to the wording of the claim, the edges are bent in order to give the array rigidity in its longitudinal direction (as shown in fig. 4). Folding the edges likely does not contribute to an increased strength of the bond between the sheets."

However, as explained in the rejection above, "Regarding claim 12, joining two sheets by folding the edge over (up, in this case) and heat-sealing the edges are art-recognized equivalents in the packaging arts for joining sheets and it would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the edge(s) of the joined sheets up and over in order to provide redundancy and increased strength in the bond." Applicant has expressed the opinion that "Folding the edges likely does not contribute to an increased strength of the bond between the sheets" but does not explain why he believes this. Absent an explanation, Examiner maintains that using an extra layer of material will indeed serve to strengthen or rigidify the bonded areas of the combination of KENNEY ET AL and JOHNSON ET AL.

10. Applicant states on page 12 of his Response that "Claims 20 and 32 recite that the distance between each candy bar in the array is less than the height of each candy bar. The Examiner states on page 6 that this feature would be obvious, "since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art". However, the cited art does not address this feature, as it appears to be unable to obtain a closely packed bandolier as claimed. The machines of Kenney and Johnson appear to be incapable of being adapted for this purpose by simply changing the dimensions of the relevant parts of the machine. The configuration required by claims 20 and 32 requires that the sealing ribs are of such height and thinness that, if using the structure of Kenney and Johnson, damage may occur to the upper sheet and/or the product upon pushing the sheet.."

However, the height and thinness of the sealing ribs are not recited in claims 20 or 32 (or the claims upon which they depend).

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John R Paradiso/

Examiner John Paradiso: (571) 272-4466 March 29, 2010

Additional Phone Numbers:
Supervisor Rinaldi Rada: (571) 272-4467
Fax (Official): (571) 273-8300
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